91-912

Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JULIA KELLER McINTYRE

Petitioner,

versus

DEPARTMENT OF THE ARMY

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JULIA KELLER McINTYRE
655 John Muir Drive, #E402
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Petitioner In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Federal Appeals Court is legally permitted to continue condition of proscription.

2. Where does estoppelling discriminatory proscription force opinion?

3. Whether administration of legal regulations and policy through Department of Army enforcement mechanisms of command require ultimately substantial justice through legal court system.

4. Does sequence of achieving substantial justice have priority in obtaining reversal of adverse decisions over substantial justice achievement?

5. How is it possible to accomplish even application of administrative justice and fair play at low court levels to force an opinion?

LISTING OF ALL PARTIES TO THE PROCEEDING PURSUANT TO RULE 28.1

1. Criminal Investigation Division.

2. Management Employee Relations.

3. Department of Army.

4. Gail Peterson.

5. Julia Keller McIntyre.

6. Stephen Brown R. Keller.

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REPORTS DELIVERED BY OTHER ADMINISTRATIVE BODIES

USACARA Decision

MSPB SF Decision SF07528910808

MSPB Appeal Decision.

USC.Ap+FC 90-3391 Affirming MSPB not accompanied by an opinion.

IN THE

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DEPARTMENT OF ARMY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit entered in these proceedings on January 15, 1991.

STATEMENT OF GROUNDS

At issue, then, is a case where government administration is being denied a vital function, its regulation's role: Achievement of substantial and just protection in government's force. Certain Army governmental obligations were erroneously discharged through a subsidiary tenant organization and a proscribed outcome obtained. A non-positive outcome continues without protection of law as required specifically through Fourteenth Amendment due process. This Amendment protects enduring and traditional notions of fair play, substantial and equitable justice as prescribed through Army Department. Such notions are discussed as proscribed jurisdiction in Metro Broadcasting, Inc. v. FCC, U.S. Sup. Ct. Rep. Vol. 107, L ed 2d No. 8,

where diversity but not uneven application of lawful administration is approved as a government objective.

Employee seeks to be included in and through judicial opinion and to force reversal of January 15, 1991 U.S. Court of Appeals for the Federal Circuit, 90-3391.

The basis for federal jurisdiction is lack of enforcement of Army Regulation. MSPB refused to enforce regulations and the Court of Appeals refused without opinion to overturn their continuance of uneven treatment through lack of ability to force compliance with substantial justice.

Inadequate, uneven protection and irregularities in due process are admission of agency abuse of discretion against United States Government policy of equal protection and its conclusion

obtaining substantive justice to everyone. To put outside protection of law specifically aimed to prevent such proscription is erroneous discretion.

As one is entitled to speedy and impartial jury, as one is entitled to know nature and cause of accusation, one is undeniably afforded due process and equal protection as a touchstone of non-infringement. In this case due process in composure, use, employing reasonable skill to comportment of related future use. Precedent of use or reasonable skill does not presuppose new and different function nor does it result in non-obvious outcome to one reasonably skilled in the art, in this case, pushing a button. See M. Rittenberg v. U.S., 361 U.S. 931, 4 L Ed 2d 353, 80 S Ct 369. Subject: Electrogator. Here, in case at issue, reasonable skill in pushing a button led to suspen-

sion and termination; latter could not have happened had there been no suspension and had Army regulation due process been followed.

Court's attention is brought to Burroughs v. Dept. of Army, 90-3234, 10/31/90. The Appeals Court, Federal Circuit, said no penalty should be imposed on employee concerning administrative judge reducing sentence to a 14 day suspension. The court said, "It is not permissible for the MSPB to split a single charge of an agency into several independent charges and then sustain only one of the newly-formulated charges. If the agency fails to prove one of the elements of its charge, then the entire charge must fail."

Agency CID, Criminal Investigation Division, cannot prove that I impeded efficiency of service by using machine or that it was my reasonable

skill in using machine that did since CID Zaleski indicates he used machine after I did and undeniably it was his use that impeded efficiency of service; his use required two documented visits to repair his use rather than one undocumented "repair" after my use before his use. Who broke machine necessitating a documented repair is not so important as question whether anyone else was suspended after their use and it went down or future uses it went down.

My contention is that I was denied equal protection of Army regulation and due policy and precedent because usual practice is to call a repairman which is what they did after Zaleski and a few other coworkers "broke it again," who'll document repair so we know there was one. Additionally, I was only one suspended, although machine was malfunctioning regularly, including

Zaleski's use over the weekend, and those are documented repairs rather than "hypothetical" repair after I used it. All we have is Zaleski's say so that he had it operating after I used it. I admitted to using machine to make a few copies on Saturday and not ever to breaking it. The machine wasn't broken until Zaleski used it on a huge copying job Sunday. And that is the use that required the "documented" repairs; because he had it "undocumentally" repaired and had it working before his use broke it requiring a report of service, which my use did not require, although his did, require two of them. A total of three repairs. At least one undocumented on Sunday, depending on how many times it was broken, and then two the next week, after Zaleski and other people used. it. To prove my innocence what Zaleski really should have done was

to not have used it Sunday and the first thing Monday morning had it documentally repaired with an adequate service report.

It is a vital link that suspension led to termination despite regulation opposing termination. Without suspension, agency CID could not have terminated me. The issue here is most vital sequence of substantive justice. With defeat of suspension, could CID have terminated me? This is why suspension issue should have been decided promptly as regulation requires. CID could not have terminated me. Army Regulation 690-700, Subchapter 1-5, c4, a, requires maintenance in a positive work environment until suspension issue decided, "The Deputy Chief of Staff for Personnel will exercise staff supervision over the Army Grievance System to assure the fair, prompt, effective

resolution of employee complaints." Agency CID abused discretion in premature termination prior to suspension decision. Because there was a possibility of USACARA's deciding in employee's favor. According to Army regulation, I was innocent until proven guilty. It is my further position that might and wealth of Agency forced MSPB's unforgivably unspeedy, late and untimely decision prior to USACARA's thus influencing adversely USACARA's decision which was predominately in my favor anyway although it might have been all in my favor otherwise. USACARA shot down fabricated charges, of delaying and failing to carry through orders which were same ones and equally insupportably used in termination charges.

That the USACARA refused to support those charges against employee

is most damaging evidence against those charges ever being rementioned as they were in termination since they were concocted and neither viable nor credible in suspension. This is why adherence to regulation was imperative; supervisor's credibility would have been questioned in termination as it was in suspension; and maybe agency might have been precluded from termination in August 1989 once agency understood suspension decision which should have been reached prior to termination. Agency would have been legally reluctant to terminate me on those charges since they did not hold water in suspension charges first time Zaleski used them.

On charges of breaking government reproduction machine, documents or lack of them indicate my innocence in using machine with reasonable skill in pushing button expecting normal non

negative outcome; and severity of penalty is also indicated since other employees who used such adequate skill and continue such skill in using machine were not suspended when it required "documented" repair since it required "documented repair" after Zaleski used it and not after I before he used it.

STATEMENT OF CASE.

Substantive harm occurred in agency disobedience of regulation and its due process requiring protection of employee, until issues decided, through Army Regulation designed to protect government from such disobedience and substantive harm by Agency with international relations yet within Department of Army and U.S. legal system jurisdiction.

This case is similar to Burroughs v. Dept. of Army. Agency

cannot prove all in charge or validity. Agency cannot prove employee erred any more than anyone else in performing same action, pushing button thus expecting, and receiving equal treatment from a normal action producing an expected result, a usual product in accordance with practice.

Substantial injustice occurred from agency misfeasant suzerainty in initially suspending employee. Management Employee Relations, MER, was at fault and misused lawful authority by letting Agency Criminal Investigation Division, CID, suspend employee since no report on damage was ever filed or even taken after employee used reproduction machine before supervisor's use. Since this is the case, there is no proof employee could have damaged government property or that there was any damage. A Report of Survey is required to prove

damage in this case from pushing a button. CID ought to learn a lesson on what is considered abuse of government property. Local 1457 AFGE has had no case where employee was charged with destruction of government property or its abuse through pushing a button on a copier machine or any abuse of government through damage of a copier machine. Yet this use, i.e., pushing a button, destroyed her job and severely damaged employee's life, career and reputation.

Employee did not ever admit to abusing machine in any way. Employee did not lie to supervisor; admitted only to pushing a button a few times. Employee does not know how to and did not tamper with machine although her

supervisor did know how to and admitted he tampered with it after employee pushed button. Merely pushing a button could not cause three repairs for which employee was blamed, suspended, and unfairly terminated against regulation.

Once employee unfairly suspended, MER, as regulations require, should have required agency to maintain employee until timely and prompt decision. Instead, CID perpetrated misuse of lawful authority: Agency terminated employee against MER, United States Civilian Appellate Review Agency, Western Region, USACARA, regulation. Although employee was supposed to be protected by regulation, employee was given proscribed treatment and put outside protection of lawful regulation through agency misfeasance. MER permitted such misfeasant discretion and failed to fulfill its vital function.

Issues raised within

Fourteenth Amendment: Due process concepts of fair play and substantial justice: Proscribed jurisdiction, erroneous discretion, reasonable skill and equal jurisprudence. New angle sought is a finding in this case against agency abuse of due process equity in fair justice, its administration and substance of discretion through interpreting proscription as discretion and thus gain a stable handle on what is permitted with political fashion and what may affect party of power war gaming on a United States citizen's legal financial future, legal pursuit of happiness and legal retirement funds earned fairly.

What concerns me is that in seeking this position, a positive outcome that is legal, I have so far been denied legal remedy not only through

Army and Merit Systems Protection Board but also through Federal Court systems. All along the way I have been refused vital information I could have used to protect myself from adverse decision against me. Such information includes evidence indicating number of repairs and number of suspensions if any for impeding efficiency of government service through pushing a button with normal skill and adequate efficiency as well as other vitally functioning information in my defense of pushing a button.

CONCLUSION.

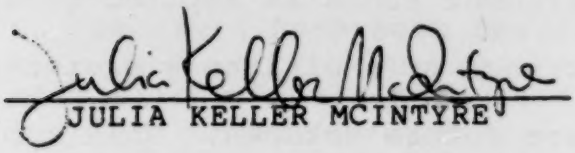
In conclusion, I have not had a steady job since CID terminated me unfairly. I need a job because I am not wealthy. I seek a happy steady job and $400,000 to $5,000,000 in damages.

I cannot emphasize enough how important money put aside in savings,

untouched, and bonds and money in retirement funds as applied government insurance or a citizen's protection toward future unknown. This applies to all discussion of "'earned rights' and 'gratuities'." I believe I do not have to conceptualize philosophical underpinnings of continued concept self-help through earning power as a U.S. citizen nor could I ever say it better than did Supreme Court in Fleming v. Nestor, argued February 24, 1960, "It comports better than any substitute we have discovered with the American concept that free men want to earn their security and not ask for doles-that what is due as a matter of earned right is far better than a gratuity . . ." Fleming, Sec. of Health, Education and Welfare, Appellant v. Ephram Nestor, 363 US 603, 4 L ed 2d 1435, 80 S Ct 1367 p 1452.

Respectfully submitted,

Dated: April 30, 1991



JULIA KELLER MCINTYRE

CERTIFICATE OF SERVICE

I, Pamela King, hereby certify that I have on April 30, 1991, by United States Mail, postage prepaid, served a copy of the foregoing Petition for Writ of Certiorari upon all parties required to be served, their names and addresses being as follows:

CID
Presidio of San Francisco
Department of Army
San Francisco, CA 94129

Gail Peterson
CID Representative
Staff Judge Advocate
Presidio of San Francisco
San Francisco, CA 94129

Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of April, 1991.

Pamela King

Pamela King

APPENDIX

JULIA KELLER McINTYRE
655 John Muir Drive
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(415) 587-2103

Petitioner in Propria Persona

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

JULIA KELLER McINTYRE, CASE NO.90-3391

Petitioner,

vs. PETITIONER' INFORMAL BRIEF

DEPARTMENT OF THE ARMY,

Respondent.

_____/

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

I seek to defend my actions, person and property from wrongful accusations of impeding efficiency in government service. I hope to find meaningful employment again, to gain back

pay and $5 million in damages, all as deterrent to any future repetition of wrongful accusation that is irreversible in life. I seek a decision reversing the Merit System's Protection Board affirmation of the Department of the Army decision to remove me from position occupied.

II. STATEMENT OF FACTS.

In August, 1989, I was removed from the position I held. I had been detailed to a Clerk Typist GS-3 position on June 13. I was not informed of the change until LTC Cole informed me and I was given the documentation withheld until August 8, 1989 by CPT Martin, only eight days before I was terminated.[1] At the time of removal, I was not performing the duties I was hired to perform. I initially accepted the budget

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1. Personnel Action, Note and SF 52.

position with the understanding it was a promotion and not a reassignment.[2] After two months, paperwork would be submitted to obtain GS-9 position I sought. It was my understanding Government funding was there.

On November 29, 1988, Mr. Zaleski gave me a letter of warning on unsatisfactory behavior. The relevance is to the general misbehavior charge. We were all instructed to turn our machines off. I believe I turned mine off. Sgt. Stroud was given the responsibility to check all machines and make sure they were off. He later told me mine was off, although Zaleski accused mine of being on.

Please note same letter. There are surge suppressors on all government machines to protect from

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2. Reassignment, Notification of Personnel Action.

noise spikes too high to hear, although pets can, but high enough to cause power failure. A high Joule rating indicates higher absorbency of hits or energy absorption. Zaleski must have thought that there were no surge suppressors or that they might malfunction. The fear of some huge power source too high for a surge suppressor to handle is an implausible fear under government working conditions within which it is permissible for workers to perform vital functions.

The Government charges on May 3, 1989, I left workplace "without informing any of . . . four supervisors that she was leaving." Following dates and charges come from Respondent's Informal Brief. In the line of command, I had two directly on top of me. Mr. Zaleski, reviewer and LTC Johnson, rater. I did not ever go to LTC Johnson

on work matters. On top of Johnson was COL Ray. I did not go to him on work matters. I do not know who the fourth one is.

On May 3, I came back from lunch and felt really sick. Informed Jack Ramsey, closest co-worker, since Zaleski was absent, I was sick and going home. He said o.k. Mr. Ramsey told me later LTC Johnson came up and asked where I was. Mr. Ramsey told me he told LTC Johnson I had gone home sick. Johnson had the final approval on time cards. He signed them. Ramsey gives them to me. I fill them in. I give them to Ramsey. He looks them over and gives them to Zaleski. Zaleski reviews them and finally Johnson. If there are any problems in the procedure, they come back to me and I change them.

Once informed of inaccuracy on time card, I instituted procedure to

change card, as usual, through Finance and Accounting, which is where they go after they're all signed, but request was denied.[3] A doctor's note is not usually required unless sick three days or more. Zaleski crossed out important information on the time card on the back concerning sick leave data. I do not know why.

I have changed time cards, within the five years I worked at Presidio, at all of these stages. Plus there is a way to change time cards which is what most people do and that is to send through a corrected time card. Corrected time card is submitted with next group of paychecks. It is a procedure used most often. One makes the same time card information as the previous

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3. Request to send through corrected time card.

one with the exception that the information needed to be changed is changed, and the time card is clearly marked to be seen. With this way, the mistake is made and then corrected. And it happens to everyone.

The government charged on May 22, 1989, failure and delay in carrying through instructions. This charge was not supported in USACARA decision No. 06-89-041-G, Feb. 14, 1990, as applied to suspension issue. Zaleski was wrong in charging me with it at the time he suspended me and equally wrong at the end of May. I might add here that while the USACARA decision was being made, I was supposed to have been maintained in a "positive work environment" until final decision, according to regulation. As it was, the MSPB SF area group made their decision concerning termination prior to the most important settlement

of the behavior issue, suspension.

May 22, in addition to regular duties, Zaleski gave me an irregular task to finish end of day, COB. Although interrupted by supervisor, did finish at end of day. I was having problems saving my work with computer. I could not go from one task to another easily because of formatting problems and an inherent incompatibility in the disk drives.[4] Mr. Harmon, computer specialist, told me formatting problems could lead to other saving, retrieving incompatibilities. I could not perform interrupted work duty and save work. I had informed Zaleski of computer malfunctioning often called computer virus. There were a few CID computers in shop, being repaired.

May 23. Zaleski gave me another irregular task not normally performed. Since

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4. Mr. Harmon's statement of computer incompatibility disk drive.

it was not a duty I usually performed, he told me to ask Acting Chief, Operations, Mr. Huber's supervisor. Since he did not know the figures either, he directed me to give them to Mr. Huber who did.

I suggested Huber discuss them with my supervisor.

Looking angry, Zaleski called me into his office; I did not want to go in but did; he started saying strange stuff and scared me. I did not know what he wanted to know.

Do not know why irregularity.

May 24. I tried a few times to explain to Zaleski what was wrong with the machine. He kept insisting nothing was wrong with it. Despite serious computer difficulties, discussed soon, I gave him the report on time to the best of my ability but he kept finding things wrong with it and kept telling me to do it

over again. He insisted nothing was wrong with the machine.

On the 24th, I gave him the report at the end of the day, he discovered a minor detail wrong. He wouldn't let me stay and finish it and threatened to call the Military Police on me if I stayed in the building. This was unheard of behavior, and after he had assigned me to GS-3 clerk typist duties, I often stayed until 5:00 and no one seemed to mind.

I was given the letter of suspension early in the day on May 24. I do not know how I made it through the day.

Zaleski accused me of damaging government property, of breaking the zerox machine and smearing black stuff on the wall. I was coming in on weekends to work my share because I was finding on Monday morning, problems I

had not left in the office Friday COB. I admitted to Zaleski I had used the zerox machine. I pushed a button. I did not hit it with a sledge hammer or smear anything on the wall. I had no idea he and Ramsey were going to use the machine for a big copying job on Sunday. In pushing the button, machine jammed. I did not know there was excess toner or any unusual bright light burning the drum. In fact, the parts he said I broke, i.e., the drum, had been replaced a few days before I used it and ordered a month in advance. In fact, someone had broken the drum before I used it and it had been replaced with a new one although I was accused of it.

Let us look closely at misbehavior issues. Notice the company report.[5]

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5. Xerox company report.

PLEASE NOTE:

Order drum & parts, February 3, 1989

Replace drum & parts, February 22, 1989

I used machine, February 25, 1989

Damaged press roller & troubleshoot dark, February 27, 1989.

I did not damage the press roller. I pushed a button and the machine jammed.

I mention this as example of credibility on my part. I did not break the machine on the 22nd either.

Most importantly, please note Zaleski letter proposed suspension April 27, 1989, detailing my misbehavior; he said I "caused the machine to 'burn' excessive toner onto the drum." But the drum was replaced a few days before. He said the machine required one hour plus of repair on Sunday to use it. On Monday it was not operational. It must have been up and down again. On the

company report, there is no mention of service on Sunday. The service is on Monday. I did not break the machine on Sunday either. I mention this to show my credibility; I did not erase the files. Mr. Harmon, computer specialist, told me that formatting problems could cause computer errors.

I mention the suspension issue because this is primarily what Zaleski means as misbehavior leading to impeding efficiency of service. Usually, if copies machine breaks or needs to be repaired,

a repairman was called. I do not know of anyone being suspended because a Xerox machine jammed. This was irregular machine behavior.

Equally irregular were the difficulties I was experiencing with computer. On May 24, computer difficul-

ty documents , please note total on account E945, $122571. page 1. I had entered information and performed saving procedure. Note Mr. Harmon's note, page 2. We backed everything up, saved everything COB May 24, 1989. Page 3. I came in on May 25 and the account balance read $115,631. All work on May 24 gone although saved presumably. The work was "erased." On May 25 I requested a new computer. On May 26, I reentered amounts. COB May 26, account read $122,573. $2 off my initial May 24 total. This is an example of the kind of problem I experienced on a weekly basis at CID. I would come in on weekends to troubleshoot minor problems sometimes taking four or five hours to find mistakes that were not there the Friday before.

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6. Documents indicating computer virus.

I was accused of something of which I am innocent. I mention this issue of false accusation or "misbehavior" issue because really it is what occurred with the Huber documents. I wasn't supposed to supply the figures or determine them in any way. I was supposed to process them within acceptable limits not to defend whether they are precise or adequate or ever supply them. Once falsely accused, the Government charges, I was insubordinate in that "she made a sarcastic comment to LTC Johnson" and left the building without authorization. I was shocked and wronged at reading the accusation that I said "what nerve." In addition, my remark was sponsored also by the fact that LTC Johnson accused me of one hour AWOL and I was playing volleyball with the office and he knew it because he was there. I guess fifteen minutes is

pretty small potatoes concerning the accusations. I used it to collect myself and regain my composure. I'm not sure I left the building. I might have gone to the powder room to wash my face.

In conclusion, you might understand why I believe the MSPB improperly applied Bolling v. Department of the Air Force, 9 MSPR 335 (1981), concerning applicability of "rehabilitation." Under no circumstances was I given opportunity to receive help from management although I approached LTC Cole concerning personal theft in the office I experienced and not any I perpetrated, although he denied I ever spoke with him. I requested training a few times in hopes of improving the situation. I requested training before the suspension a few times and after in a written request dated July 5, 1989, where I specifically requested opportu-

nity to meet their requirements and perform above standard. There was no answer.

What I have experienced this last year and a half is beyond the realm of human capability. To consider what scape goatism means from this end is no happy matter. I seek a positive outcome.

Respectfully submitted,

Dated: November 21, 1990

JULIA KELLER McINTYRE

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PETITIONER'S FORMAL BRIEF

vs.

DEPARTMENT OF THE ARMY,

Respondent.

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I. NATURE OF CASE.

Wrongful government agency threats and assaults to my person, family, pet and property have caused egregious mistakes. These blunders led to the loss of my career and livelihood, peace of mind and body and necessary

credibility and safety required to exist legally in San Francisco. Damages: $5 million. Seek recovery of job.

The damage has almost lost my marriage and all my family relationships have been severely impaired beyond my ability to right them. I have undergone a vicious attack from Criminal Investigation Division, CID, and its many trained investigators and police for more than two years. It has meant complete loss of self respect and esteem, sense of self worth, because I am an innocent citizen yet wrongfully accused and attacked by the largest established organization in the country. And my ancestors fought in the Revolution to establish government. Through the lady my family has been a member of the Daughters of American Revolution, an organization approved of through another important family lady. We are permitted

to be members of DAR through my father's side of the family. Through him, my ancestors came on the Mayflower.

I have been attacked by federal government with all its procedures and mechanical enactment or rote "agency" decisions; this attack indicates an agency that has in a sense gone mad and abused its discretion most viciously and against United States.

II. STATEMENT OF FACTS:

PETITIONER'S DEFENSE

Please note Petitioner's Informal Brief, PIB, Certificate of Service, COS, 11/21/90. Also please note Respondent's Informal Brief, RIB, COS, 11/14/90. RIB, Page 2, paragraph 1. I did not forget to tell anyone. I told Mr. Ramsey, as usual, in Mr. Zaleski's absence I was sick to determine whether it would be okay. He affirmed my requesting to go home in a

positive way. Three hours sick leave. One does not usually obtain a doctor's note as evidence of illness unless employee is gone three days: a total of 24 hours. RIB, page 2, paragraph 2. I said I would and did give him the report in time close of business, COB, as requested. I did not ever <u>even once</u> refuse to do the work. I do not believe I did it wrong although he did. I did refuse to do any illegal work which would give me any jail sentence; my supervisor was discussing three to five years and I <u>did refuse</u> because not any of my job description is illegal. If so, I would have initially refused the job. As it is, I did my best to do a good job and perform work normally prepared to do on a regular basis as required on an hourly basis.

I wasn't sarcastic. I said I would do the work COB. Mr. Zaleski was

overloading me with extra work in addition to regular duties required to be performed. During this time and before, a problem in doing interrupted work patterns continued to occur because of a computer malfunction in the saving area and other areas, too, formatting specifically, causing an incapability in disk drives and performance of ordinary vital functions. Please note PIB, Page 3, Paragraph 3. I did my best to understand what he wanted and give it to him. RIB, Page 3, paragraph 1. USACARA decision No. 06-89-041-G, 2/14/90 as applied to subject of carrying through directions supports my credibility. Zaleski had changed all the three letter abbreviations. I used the ones there and he called these usual abbreviations serious inaccuracies. I do not know why he changed them all.

RIB, Page 3, paragraph 2.

This was not a regular duty normally performed. Zaleski said to ask Acting Chief Operations, and Investigator, Senior, and he said give them to Mr. Huber. Offhand, I do not remember Mr. Huber's supervisor's name, although I can recognize the person and probably the name. Mr. Huber would know how to find the information since it was his area. This request was an irregular time consuming work duty not in my statement of job duties and responsibilities, and it was interfering with my performance of normal duties I would be held accountable. When he called me into his office, I thought he was crazy. I didn't know what he wanted. Zaleski's unusual behavior and statements made me queasy because I was being required to answer on something outside my normal duties and did not know the answers. Huber did and gave them to Zaleski

because it was Huber's job. Finally, I did not want to be professionally embarrassed.

RIB, Page 4, paragraph 1. The formatting function is absolutely necessary. The computer was losing files and Zaleski was blaming me although I made it known to him there was a problem and Mr. Harmon also informed him. I thought Zaleski was purposefully misunderstanding me.

RIB, Page 4, paragraph 2. I thought I had finished them all and done what he wanted, and I tried my best to give him what he wanted but he kept discovering something wrong with it. Although I offered to stay without overtime, I didn't stay because he threatened to have the police brutally remove me from the building. I believe it was Zaleski who had me arrested and beaten up several times later on by the

police on false trumped up charges. After he threatened me with police brutality, I left the building before 4:15.

RIB, Page 5, paragraph 1. I said "what nerve" because I was innocent and both Johnson and Zaleski knew it. Plus the AWOL charge" was time approved by the Commander and Johnson knew it because he was there playing volleyball with the office too; but not Zaleski; he did not play volleyball ever even once. It was the regular time the office played volleyball and I had been doing it on a regular basis for more than six months precisely at that time. I went to read the suspension letter approximately fifteen minutes but I think I stayed in the building.

RIB, Page 5, paragraph 2 and PIB, Page 5, paragraph 1. The SAVIN record indicates the machine was re-

paired 2/21/90 because a few parts ordered a month earlier that someone knew who ordered them would need to be replaced. Although then the machine was serviced and no one was suspended. I used the machine on the following Saturday. Please note the part Zaleski accused me of damaging was actually in need of repair several days earlier and ordered earlier on 2/3/90: the drum. Yet he blamed me. He even blamed me at the wrong time after it was fixed! That is, broken and fixed. I pushed a button Saturday. I did not damage the button or machine in any way. It jammed. I had not been instructed in any procedure, emergency procedure, to call to repair machine after hours, although there were offices who had such procedures and checked whether they worked! Zaleski and Ramsey came in on Sunday. There is no indication of a service on

Sunday; however, Zaleski says in his proposal to suspend letter it required an hour to repair. He used it then and caused it to malfunction again after repair because it was down Monday morning although he had it repaired Sunday. It was down and up and down again on Sunday well before Monday. Please note Zaleski letter, 27 Apr 89, Proposal to Suspend, Page 2, paragraph e, "It required over one hour of repair on Sunday . . . to be marginally operational."[1] Apparently it was CPT Harvey with him although he told me it was Ramsey. I did not break the machine Sunday or Wednesday, and in case it was made to malfunction after being repaired a second time Sunday or even Monday morning before I came into work, I did not break it then either. Zaleski must have

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1. Zaleski Proposal to Suspend Ltr, April 27, 1989.

known that it should not have even jammed with my use on Saturday. I knew it. Yet Zaleski blamed me on Monday and he and Ramsey or is it Harvey are the ones who really did break it severely because then it needed two service repairs instead of the one hour after I used it. Same letter: "This machine ultimately required two service visits and caused a delay in mission accomplishment for the entire headquarters." Who impeded efficiency of service? Zaleski and "partner." Because it was fixed before they used it on Sunday or was it early Monday morning.

Zaleski and accomplice are the ones who made the machine malfunction on Sunday and not I who didn't "break" it Saturday either because someone who was not suspended had "broken" (?) the drum a few days before I used it. They accused me of impeding efficiency when

they knew full well that I didn't impede service on the 21st, a work day, or on a Saturday, because it wasn't a work day. Or even on Monday morning because it had been fixed on Sunday. The machine was not behaving properly; maybe someone had tampered with it and it's the best machine I have ever used. I have no idea whether Zaleski was using the machine for official business but I do know he blamed me for breaking it when he did, and apparently they really did break it after they had fixed the paper jam because of the service required that did impede efficiency of service.

Neither Zaleski or what's his name were suspended for the machine's malfunctioning on Sunday. But they should have been. Precisely for each of the two services required after they used it since there were tow of them because they must have really hurt it if

they did more than push a button. They even had it repaired badly! So badly that it required two extra visits. As far as I know, they could even be lying since there is no report of service on Sunday. One might even wonder what they did to the machine since the paper jam that happened when I pushed the button caused a whole hour of repair.

PIB, Page 5, paragraph 2. United States Army Civilian Appellate Review Agency, heretofore called USACA-RA, decided in my favor in the case aforementioned on the charges of delaying and failing to carry through instructions. They flatly refused to support those charges against me because they were not true. They were fabricated charges and equally fabricated in termination charges. The Agency's credibility is severely damaged. Perhaps that is why Merit System Protection

Board, MSPB, decided prior to USACARA because even MSPB knew I really did try to do what Zaleski wanted and what I was supposed to do because I was afraid of losing my job and all termination from the Federal Government means. All the work projects and persecution losing means day after day after day.

I did do what Zaleski said on the days May 22-24 on the report he suspiciously accuses me of stalling on although it was interfering with my regular duties particularly because I was having computer problems.

Please note, I was supposed to have been maintained in a "positive work environment" while USACARA was deciding the suspension issue. Yet I was terminated August 16, 1989, and USACARA did not decide my case until May 1990. All that time I experienced terrible hardships and even an environmental failure

-- earthquake -- were unnecessary and Army regulation, which I have mentioned in other documents, AR 690-700, Subchapter 1-5, c1, specifically prevented agency CID from forcing an employee to be made an innocent victim until USACARA reached a decision. Attached is an analysis and discussion of all that happened to me that would not have happened had regulation been observed.[2] What this means is that I was put in terrible danger and terrible things happened to me including almost losing my right arm which would not have happened otherwise because CID would not have been able to make me such a victim. And they were expressly forbidden to do so. Army has specific sanctions against an Agency abusing its discretion in such a way: USACARA is such an agency. My

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2. Damages due to false accusation.

arm isn't ever going to be the same. And it is incredibly important to me. At times, I even have to use the left one. Neither one is supposed to be tampered with or taken for granted and it is worth millions of dollars as it is without threat of loss or other extreme hardships such as CID might threaten to my legs without protection.

The system provides a way to protect an individual who has been falsely accused and disarmed of protection Federal Government is supposed to provide in such cases and it says so in its regulation on the Civilian Appellate Review Agency policy. It does this because the Federal Government doesn't want to make terrible mistakes with any of its citizens because of what this means in court and this mechanism of a positive work environment and supportive procedures checks the powerful arm of

government symbolically and in reality from destroying an innocent person and whole home area and living region. The kind of damages I sustained should not have happened. What our neighborhood went through was equally unnecessary. No penalty should have been imposed on me. I speak of the penalty of wrongful accusation and all that can and does happen because of it to an innocent petitioner.

I seek to recover my job, back pay, opportunity to be in the position I could have been in had I not been attacked. Damages to my honor, person, pet and family: $5 million. I seek decision in my favor to stop the destruction to my credibility in the eyes of important persons who were told lies about me so bad that I do not have in life what I want yet and might have had otherwise.

My husband brought to my attention a really important decision: Burroughs v. Dept. of Army, 90-3234, October 31, 1990. What is most interesting concerning this case is that the U.S. Court of Appeals for the Federal Circuit concluded that the burden of proof with regard to misconduct issues is the responsibility of agency bringing charge and to uphold agency decision on suspension and greater issues requires agency to prove all that is in a charge to uphold it.

Agency CID cannot prove 1) my actions damaged the machine in any way and 2) my actions impeded efficiency through delay or failure. If such were ever the case, as CID alleges, it is agency responsibility to train new employees and take good care of them as regulation provides.

Further, the Administration

Judge's credibility is questionable not only because of the timing of the case, and he knew of the suspension issue at USACARA because I told him it was there, but also because he did everything to discourage me from defending myself. He said I would never work in the Federal Government ever again and apparently he did everything to make sure of it. His reaction was similar to Zaleski's when Zaleski ripped up my SF 171 and said the same thing.

In conclusion, I seek a positive outcome; a decision in my favor and all it means. To stop this terrible heartbreak I have experienced for years.

III. DAMAGES.

Attacked in car while car stopped by several police cars. Severely roughed up. No chemical test taken. Beaten up by policeman. Supposed ine-

briation while driving. No chemical test was taken as required by law. My hand was beaten with a night stick. My right arm was severely injured and maimed to such an extent that I had to have a full hard cast on the lower portion to the elbow.

Assaulted by landlord several weeks ago in hallway. I filed an assault and battery charge against him to protect myself.

I was coming home and parking car in front of my apartment at approximately three o'clock. I was attacked and arrested by two crazed policemen who handcuffed me and ruffed me up and beat me. They said the charges were assault with a deadly weapon and misdemeanor. I own no weapons of any kind. All charges were immediately dropped but not until they had injured me and taken me to the worst place I have ever been where there

were only men before they took me to the downtown jail. But the police beat me up and so severely traumatized me for no reason that I am not ever going to recover. It cost $500, $350 more than the last unemployment check I will ever receive. I believe the Federal Government told them to dissuade and scare me from filing this memorandum to the Federal Court since it happened a few days ago and I have to meet a deadline established through court procedure. I am hoping to file some sort of charge against the police. I have pictures of the bruises.

Finally, the next day, a few days ago, I was assaulted by the landlady who struck my face with her hand and who threatened to kill me. Like her husband and the other people who have told vicious lies about me for their own "supposed" personal gain, she lied to my

husband, whom I care for deeply, and said I was lying that she did not attack me. She tried to turn my own husband against me. But I happen to have some pictures of her vicious assault because I was taking pictures and had a camera in my hand! I am going to file charges against her. The point is that I have had to live in the most dangerous unhappy situation and only through intelligence have I been able to save myself. As I discussed these issues with someone whom I will not mention, I was told that the landlords are in cahoots with the former chief of police.

Had I had a job, we would have better protection and would have moved into a place without physical danger and assault and the constant threat of battery.

It isn't just my own physical health I have been consistently worried

about but also my pet's health. She couldn't mean any more to me that she does. I came home one day last spring and discovered her stomach had been brutally lacerated. She is an indoor, inside, cat and does not ever go outside, outdoors unless I take her in her carrying case and bag. Without exception she does not ever go outside unaccompanied. I rushed her to the hospital to save her life and they were able to save it with overnight surgery. It cost me almost $200. I do not think anyone would understand her value but I would not offer her up to sell not even looking at a million dollars in cash. I made her a champion this year under the most difficult experiences and she came through a win despite them! They did everything to stop her from receiving her due.

I had to go to the hospital

long before my pet did and have my right arm operated on and would have lost my arm otherwise. I was in the hospital three days, just before the earthquake. My husband had put me on his medical plan or I wouldn't have had the treatment I needed because the Federal Government stopped my medical coverage. Day after day, the government attacked our neighborhood through the city and other contracting agents infuriating everyone. It isn't just the nightmare of the constant loud unbearable droning noise of the cement cutters or the seven hour continuum of ear battery month after month after month, which hurt my little pet's ears because she was just a baby not to mention everyone else's in the near vicinity, or the total lack of any peace and quiet but there were numbers of strange work people in the neighborhood -- some with quite a

frightening appearance. There has been and is a continual rape threat I have not ever experienced before termination from government.

I believe my food and water were tampered with, although I cannot prove it.

I have been chronically short of money making almost insurmountable marital problems causing total lack of authority I had in my marriage and in professional transactions prior to termination.

Unable to find meaningful employment although I went on at least four government, federal, interviews. Everywhere I was turned down and insulted and refused work. We were saving money to move out of our one room studio to have a baby approved of specifically by my father, Chauncey, and to build a house and have moved into it by now.

After the MSPB decision, I was called and offered a job, the one exception I've had since termination, but it turned out to be an adverse set up that I would not have accepted had I not been forced to through CA State Unemployment Compensation regulations which preclude refusing work. It is the only job I have had since termination from CID. It was the most terrible work experience in an unsafe building I have ever had in my life. In the basement at the end of two long dark hallways in one small, cramped room: eight people without normal office equipment or any of the usual business necessities. For the first and only time in my life, I was viciously attacked by a few "supposed coworkers." As soon as the USACARA decision was made, I was terminated in the worst, most horrible way. I think that this so-called "office" was in cahoots with

CID, although I cannot prove it. Suffice it to say that this experience and all of it has meant the destruction of any kind of human dignity and social standing in society. My husband has even been picking up cans and getting money from recycling to pay our bills -- and people have been making wicked jokes about it -- although I expressly requested that he not do so and that we should go without rather than have him disgrace us any further than the Federal Government has already through its illegal attack on my being.

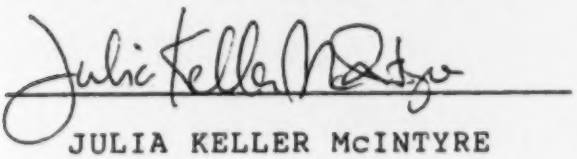
The Agency CID hit us so hard that our insurance was canceled because of abnormally high numbers of accidents we did not ever have before and that were not our fault. The brakes on our car have needed repair several times because they failed completely and if we had been on a freeway going 60 miles

per hour, we might have been killed and so might equally innocent people.

I know it is CID doing this to us because I told LTC Cole before he started to terminate me that this had happened and asked him to ease up on us but he denied it under oath to the Administrative Judge and I have the tapes unless he takes them. He also denied that I ever spoke with him concerning the times my keys were stolen from my purse at CID once when my husband was out of town and I had no back up keys because those had also been stolen. I was so scared of being attacked in my own apartment by CID that I had all the locks changed. As it turned out I should have done it every couple of months because that might have stopped them from lacerating my pet's stomach. I worry whether they will attack and kill my baby once I have one.

Agency CID has been so vicious to me that I do not lead them to my family or ever go there anymore and maybe won't ever be able to ever again. The only way I would go to my family's houses is with a baby to protect it from CID.

Dated: December 18, 1990



JULIA KELLER McINTYRE

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JULIA KELLER McINTYRE

Petitioner,

versus

DEPARTMENT OF THE ARMY

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JULIA KELLER McINTYRE
655 John Muir Dr., #E402
San Francisco, CA 94132-1033
(415) 587-2103
Petitioner In Propria Persona

BEFORE

Philip L. Arnaudo
Administrative Judge

INITIAL DECISION

INTRODUCTION

The appellant timely appealed the agency action which removed her from her position of Budget Analyst, effective August 16, 1989. Board jurisdiction over this appeal is based upon 5 U.S.C.§§ 7511, 7512, and 7701. For the reasons set forth below, the agency action is affirmed.

ANALYSIS AND FINDINGS

Charges

The appellant was charged with the following misconduct: falsification of a time card; unauthorized absence (AWOL); delay in carrying out instructions of a supervisor; failure to follow instructions; insubordination; and leaving the work site without permission. The charges are based on

a series of incidents which occurred between May 3 and May 24, 1989. The incidents are addressed in chronological sequence. The appellant denies all charges.[1]

a. May 3, 1989 - Falsification of information on a time card and AWOL.

The appellant's supervisor, S.J. Zaleski, Chief of the Resource Management Division, gave the following testimony. He planned to be absent from work for about 6 hours on May 3, a Wednesday. He advised the employees, including the appellant, that they should bring to him before he left any matters needing his attention, and that he would be home if he was needed. Several days later, he reviewed, approved and signed the time cards, including the appellant's, on

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[1] The appellant withdrew an initial allegation of discrimination which she indicated she is pursuing elsewhere. See Prehearing Order, November 2, 1989, and Opening Statements, Board hearing.

which she stated that she was present for duty all of May 3, 1989. The appellant was the unit timekeeper and had reviewed this time and attendance data and the cards which Zaleski approved. The appellant also was the timekeeper in her previous work unit.

On May 9, Zaleski learned from one of the appellant's co-workers, J. P. Ramsey, that the appellant left the office shortly after Zaleski. First, she went to lunch. After returning from lunch, she told Ramsey that she had a few chores to do and left for approximately one half hour. Upon her return, she told Ramsey that she was not feeling well and was going home. She left at 1:00 p.m. and did not return that day. The appellant did not inform any of the available four supervisors, including Zaleski, who was reachable at home, that she was leaving or that she was ill. Ramsey also explained to Zaleski that he felt that he was being taken

advantage of by the appellant because whenever Zaleski left, so did she.[2]

On returning to his office, Zaleski reviewed the time cards and leave request forms (SF 71). He also confirmed that the appellant had not requested or taken any leave for May 3. He asked the appellant for an explanation. She stated she could not recall where she was that afternoon. When Zaleski stated that he had heard she was not at work, the appellant replied, "If I wasn't at work, I must have been sick." Asked why she had not informed any supervisor before or after leaving or why she did not request leave in writing, she replied that she simply forgot to do so. In the absence of any evidence of illness, and under the circumstances, Zaleski rejected this excuse.

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[2] Ramsey's testimony at the Board hearing corroborated the pertinent parts of the Zaleski testimony.

The evidence also shows that the appellant was aware of procedures for requesting leave. Indeed, Zaleski had granted her six hours of sick leave on Monday, May 1, a few days before the incident. Further, the appellant had been counselled about leave procedures several times the previous month. She also failed to provide corroboration that her absence was due to illness.[3] Ramsey pointed out that she did not appear ill either the day of her absence or the day of her return. There were no witnesses to any aspect of her alleged state of ill health on that day.

Implicit in a charge of falsification of a time card is the element that the appellant intentionally provided false information with the purpose to defraud the government. See

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[3] One of the appellant's comments during her testimony seems to sum up her position on this charge, "It is not any of Zaleski's business where I am. he has a lot of nerve to question if I'm sick."

Thompkins v. United States Postal Service, 23 M.S.P.R. 5, 8 (1984). Intent is an element of the falsification charge which must be proven. Gillis v. United States Postal Service, 24 M.S.P.R. 642, 645 (1984). "Intent being a state of mind, can seldom be proven directly. Circumstantial evidence is generally utilized ... to establish intent." Tucker v. the United States, 624 F.2d 1029, 1033 (Ct.Cl. 1980). Consistent with the foregoing, the Board has held that circumstantial evidence is sufficient to establish such intent. See Smith v. Pennsylvania Avenue Development Corporation, 8 M.S.P.R. 410, 412 (1981).

The evidence shows, and I find, that the appellant's initial response to Zaleski was both contrived and non-responsive. Zaleski's request for an explanation of the appellant's absence was only a few days after May , and yet the appellant claimed to have no

recollection of the day. Even when she did respond, she did not claim she was ill, only that if she was absent, she "must have been ill." There was no medical evidence of illness either before or after the alleged occurrence. There was no other legitimate showing of illness, or corroboration, such as reports of her appearance or comments. Further, she was aware of agency leave procedures, and reviewed her own time card as part of her timekeeper responsibilities for the unit, only a few days after she left work.

Additionally, her explanation that she apparently forgot she was ill and also forgot to make a note of it in accordance with established procedures is not plausible. There were simply too many available opportunities to remember. Even according to her version, she had to "forget" to mention it to her supervisors or fill out a request

for leave when she left that day, to forget to mention it to Zaleski or other supervisors or note it on her return, and then to forget to note it on her time card a few days later. Under these circumstances, her excuse is not credible.

In Barrett v. Department of Air Force, 5 M.S.P.R. 43, 44 (1981), the Board held that the element of knowledge in a falsification/fraud case is established when the appellant knows, ought to know, has a duty to know, or has the means of knowing the truth. in this case, the preponderant evidence establishes that the appellant knew, or should have known when she submitted the time card, that it contained false information.

I find that the falsification charge is sustained by preponderant evidence.

I also find that the charge of three hours of AWOL is supported by preponderant

evidence. I find that the agency denial of the appellant's belated attempt to request sick leave for the period was not unreasonable under the noted circumstances. See Staten v. United States Postal Service, 26 M.S.P.R. 206, 208 (1985).

b. May 22, 1989 - Delay in carrying out instructions, failure to carry out instructions, and insubordination.

At the beginning of this work day, 7:45 a.m., Zaleski directed the appellant to enter budget figures from an approved overtime request into the computer before the end of the work day, 4:15 p.m. Zaleski stressed to the appellant the importance of the input because he needed an exact, current printout of allocated overtime funds in order to know if he was still within his budget (i.e., "fund ceiling") for overtime expenditures.

Knowing how long it took the appellant to do the work he had requested, Zaleski reminded the appellant at 2:30 p.m. that this information was important and he needed it promptly. The appellant replied, "I'll do it when I get to it." Since Zaleski was the appellant's only supervisor, he asked if she had a higher priority project; she did not. He then told her she was only working on routine matters. Further, because some overtime requests might come in at any time, he needed an up-to-the-minute report on allocations and the fund ceiling. he then directed her to begin input of the overtime entries. The appellant then said that she was busy and "chances are" she would not get to it. When he asked her, at this point, if she was refusing to comply with a direct order, she said she would "get to it."

Instead of immediately proceeding to the directed tasks, the appellant continued to

work on the routine matters for 45 minutes before she even began the work directed by Zaleski. By the end of the day, she provided the product requested. However, there were significant inaccuracies. There were two citations to incorrect amounts of overtime, three incorrect charges to units, and 16 instances where the appellant used incorrect abbreviations. Moreover, after all this time, the appellant still did not provide the accurate balance of funds available.

Testifying to the above, Zaleski explained that this was a simple task, that the appellant defied his directives, and when she did finally respond, the data provided was erroneous and it was too late that day for her to make the necessary corrections.

The appellant's response is, in essence, that she had other work to do and she did get the material to Zaleski by "close of

business." I find these contentions inadequate to justify or excuse her conduct.

In this instance, as in other instances, the appellant also seeks to excuse her conduct and performance by asserting that her computer was not properly functioning. I have considered the testimony of Zaleski on this matter, and, as in the other instances cited, I find him to be a credible witness. He explained that the appellant's computer was functioning properly with regard to the input elements she was required to provide. Indeed, Zaleski had the computer examined by agency specialists. They confirmed his conclusion. With reference to the items that the appellant needed to use, the computer was functioning. Zaleski uses the same computer and has no problems. He also testified that he used this computer to compile the budget for the fiscal year, and it worked fine.

I have also considered the statement that the appellant procured from one of the specialists also relied upon by Zaleski. This confirms Zaleski's conclusion that while the computer will not format disks, it will perform the functions that the appellant was required to do, it was not the machine, but the appellant who was causing the problems. This testimony full describes what, in fact, transpired, i.e., the appellant did finally submit the requested report, but it contained inaccurate data.

I find that the appellant failed to carry out Zaleski's directive, as modified at 2:30 p.m. She refused to set aside other work when directed to prepare a report which her supervisor needed. She also delayed in carrying out this directive by 45 minutes without excuse or justification. Her behavior was insubordinate to the extent that

she refused a lawful order of her supervisor without a legitimate basis.

Failure to carry out instructions. Prior to May 22, Zaleski had returned travel documents to the appellant with instructions on how she should perform her review responsibilities. She was to look for inaccuracies such as missing date or incorrect figures, research the correct answers, and then report her findings to him.

When Zaleski learned that the appellant had someone else (i.e., Huber) do the research, he did not object. The purpose of the project was to train the appellant, however, he wanted the appellant, not Huber, to explain the process. Zaleski then heard the appellant telling Huber to give Zaleski the explanation. Zaleski told the appellant that he wanted her efforts, not Huber's. The appellant replied, "If you want a briefing on this, you get it from Huber!" She apparently

said this in a disrespectful tone of voice and departed without being dismissed. Under the circumstances, Zaleski took the briefing from Huber. In short, the appellant failed to carry out instructions.

Thereafter, seeking to counsel the appellant about yet another example of inappropriate behavior, Zaleski asked her to come to his office. The appellant came into the office, but started speaking in an allegedly loud and rude manner. Zaleski asked her to stop, and explained that he would give her a chance to speak, but, first, he wanted to say something. The appellant interrupted, saying, "There's nothing wrong with my behavior. I don't have to listen to what you say. I don't have to listen to any counseling." She then turned her back on Zaleski and walked out of the office. I find the appellant's behavior to have been both disrespectful and insubordinate, as charged.

Supervisors have the right to counsel employees. Zaleski clearly stated his purpose to do so and directed the appellant to listen. Instead, she made her own comments and refused to remain.

I have considered the appellant's admission that she did "resist" going to his office, because the matter was "routine." She also acknowledged, "He went into some sort of explanation, but I thought he was crazy." She did not assert that she understood the materials, and she did not explain how this was routine. I find Zaleski's testimony persuasive on this incident. In brief, I find that the charges of misconduct on May 22, are sustained.

c. <u>May 24, 1989 - Insubordination, delay in following orders, and leaving the work site without permission</u>.

Insubordination. At 8:00 a.m. the appellant gave Zaleski a memorandum complaining that her computer was malfunctioning. Zaleski examined the machine and found it to be in working order, as noted above. Zaleski confirmed his determination after consulting with a specialist (i.e., only the disk formatting function was not operational).[4] Zaleski then returned the memo to the appellant and asked her to explain the problem to him. The appellant refused to give an explanation. She retorted, "If you don't understand, it's your tough luck. Read it again!" I find the charge of insubordinate behavior sustained.

Delay in following orders, and insubordination. At about 9:30 a.m., Zaleski

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[4] Zaleski explained that repairing this disk formatting function on the appellant's machine was unnecessary since other machines had the capability to format disks, and these machines and formatted disks were available to the appellant.

directed the appellant to correct the overtime report errors noted earlier, and to post four additions to the unit operating budget and quarterly allotment. This task was to be done by the end of the work day. The time needed to complete the assignment was no more than one hour, according to Zaleski. At about 4 p.m., the appellant turned in the posting. She also said that she had not corrected the overtime report. The appellant said that she would remain in the office after hours to do the report. Zaleski replied that he could not authorize her to work overtime. He explained that he would have had to provide compensation for her overtime, and without the report she had failed to provide, he did not have the necessary up-to-date balances to grant the request. The appellant asserted that Zaleski had no right to tell her what to do. She said, "I have a right to stay here and I'm

going to. What are you going to do about it." Zaleski, believing that she was directly challenging his authority, said he would call the military police to remove her if she refused to go. The appellant shouted that he had no right to call them.[5] She later left, however, but not before putting the report, which was still incorrect, on Zaleski's desk.

The appellant sought to explain her response as prompted by her difficulties with the computer and Zaleski. About Zaleski she stated, "I couldn't make him understand"; and "I couldn't bring him into line." She described her own behavior as "highly professional and businesslike," while Zaleski was simply harassing her. She also acknowledges that she "might have been very

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[5] Indeed, Zaleski immediately went to the civilian personnel office to confirm that he had that authority.

upset," but she "did not mean to be insubordinate."

I find the charge supported by the preponderant evidence, Zaleski's testimony. In this instance, as in others, I have found no evidence of untruthfulness or lack of ability to observe and recollect such as would cast doubt on Zaleski's credibility. I have also carefully considered his demeanor. Further, it was Zaleski who hired the appellant. He recalled that no one on the list of eligibles had budget experience, but the appellant had the most potential because of her education. The appellant had assured him that she would complete a related correspondence course, he believed she was "trainable," and gave her an opportunity.

Insubordination and leaving the work site without permission. On May 24, the Deputy Commander of the unit presented the appellant with a letter of suspension for

three days. Upon receiving the letter, the appellant stated, "You've got a lot of nerve." She left the office abruptly and without being dismissed. She was away from the work site for 15 minutes, without permission.

Zaleski, a witness to this incident, indicated that the Deputy Commander was taken aback and said, "I don't believe she did that." He then annotated the agency copy of the letter with the words she used. A review of the letter copy confirms the annotation.

The appellant did not deny the conduct. She admitted that she was angry and believed the suspension was wrong, and noted, "It took great restraint not to slap Lieutenant Colonel Johnson."[6] She did not recall where she went after the incident, but did not deny

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[6] This testimony is corroborated by a review of the appellant's written replies. In several, she referred to a desire to slap the officer.

she was not in her office, and she did not establish that she was at the work site.

I find that the preponderant evidence establishes that the appellant left her assigned work site, without permission, and that her conduct was disrespectful to her supervisor. I do not find this conduct insubordinate, however, because the appellant did not refuse to follow a lawful order of her supervisor.

Penalty

The appellant contends that the penalty of removal was too severe. The agency has significant discretion to act within the bounds of reasonableness in determining an appropriate penalty. See Davis v. Department of the Treasury, 8 M.S.P.R. 317 (1981). I have considered the explanation provided by the deciding official regarding the penalty factors set forth in Douglas v. Veterans

Administration, 5 M.S.P.R. 280, 306 (1981). I find that this official carefully considered the relevant Douglas factors.

In the case of the delay, failure and refusal to follow orders, the offenses were serious, intentional, and repeated. Abusive, disrespectful treatment of supervisors, and disregard of lawful directives by employees is unacceptable in the work place. See Roberson v. Veterans Administration, 27 M.S.P.R. 489, 494 (1985), and Hubble v. Department of Justice, 6 M.S.P.R. 659, 661 (1981).

In Roberson, the Board explained, "An agency is entitled to employee respect for agency rules and regulations relating to attendance and authorized absences, to employee respect for supervisor's authority and to employee conformity to accepted standards of conduct. Abusive language and disrespectful behavior are not acceptable

conduct and are not conducive to a stable work atmosphere." Id. at 494.

The Board has specifically held that insubordinate and disrespectful behavior towards supervisors undermines the capacity of management to maintain efficiency and discipline, since toleration of repeated instances of such behavior would "make a mockery of management's authority and supervisory responsibility." See Jefferson v. Veterans Administration, 6 M.S.P.R. 348, 352 (1981).

In view of her timekeeper duties, the AWOL and time card offenses were particularly significant since they related directly to her trustworthiness in performing her duties and responsibilities.

The deciding official also considered the appellant's prior disciplinary record, as follows: a reprimand for AWOL, insubordination, and tardiness in June 1988;

a letter of warning in November 1988, for failure to follow supervisory instructions; and a suspension (three days) in May 1989, for lying to a supervisor, delay in carrying out instructions and abuse of government property. The appellant contends that the first of these should not be considered because it occurred in another agency, the last was still in the grievance process, and each is an erroneous decision.

I find that the deciding official was entitled to consider this record in determining the appropriateness of the removal penalty. The first two of these meet the test set forth in Bolling v. Department of the Air Force, 9 M.S.P.R. 335, 339-40 (1981). in view of the appellant's assertion, I have also reviewed the record of the May 1989 suspension in accordance with the standards Bolling sets for challenges to on-going disciplinary matters. I find that

the evidence does not establish that the suspension was "clearly erroneous" and the evidence does not leave a "definite and firm conviction that a mistake was committed."

Nothing about the length or character of the appellant's service provides a reason for mitigating the penalty. The appellant performed an important function as part of a budget unit which supports an organization conducting investigations of criminal and other serious matters. The record supports the agency conclusion that her past disciplinary record, and the current misconduct, deleteriously affected its confidence in her ability to work for the agency. The appellant had ample notice that this type of misconduct was intolerable.

The preponderant evidence supports the conclusion of the deciding official that no potential exists for the appellant's rehabilitation. Notwithstanding the repeated

attempts to correct the appellant's conduct at the agency, the appellant acknowledges no wrongdoing. In response to the agency's expressed concern that there was too much pressure or stress, the appellant replied, "It did not make me nervous. I did not like it. I care to have a loose relaxed workplace."[7]

In light of this record, the agency decision that alternative sanctions to removal are inappropriate is within the tolerable limits of reasonableness. See Ott v. Department of the Army, 14 M.S.P.R. 642, 647 (1983).

In summary, the charges are sustained as described above, the penalty does not exceed the bounds of reasonableness, and the removal action was taken for such cause as promotes the efficiency of the service.

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[7] An example of the tone of her response is seen in her July 31 reply to the proposal notice. The appellant stated, "I would like an apology on your knees first..."

DECISION

The agency's action is AFFIRMED.

FOR THE BOARD:

Philip L. Arnaudo
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on January 24, 1990, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file your petition with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, NS., Suite 802
Washington, DC 20419

Your petition must be postmarked or hand-delivered no later than the date this initial decision becomes final. If you fail to provide a statement with your petition that you have either mailed or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 30 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent by regular mail this day to each of the following:

Appellant

Julia P. McIntyre
1266 Stanyan Street, #8
San Francisco, CA 94117

Agency's Representative

Gail Petersen
Department of the Army
Office of the Staff Judge Advocate
Presidio of San Francisco, CA 94129

Other

Mr. Timothy M. Dirks
U.S. Office of Personnel Management
Employee Relations Division
1900 "E" Street, NW., Room 7623
Washington, DC 20415

Date: December 20, 1989

Larry Hunt
Legal Technician

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on December 20, 1989, because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. Although one of the charges on which an element of the appellant's disciplinary record was based was not sustained in a recent grievance decision, that fact is not material to the outcome of the current appeal. The decision nonetheless sustained the suspension there at issue, and the instant removal action remains reasonable under all of the circumstances of this case.

This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. § 1201.113(b).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 1703(a)(2). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Robert Taylor
Clerk of the Board

Washington, D.C.

February 23, 1990

Office of the Commander

Ms. Julia P. McIntyre
1266 Stanyan Street, #8
San Francisco, California 9417

Dear Ms. McIntyre:

Reference is made to your formal grievance, docket number 06-89-041-G, concerning a three day suspension for delay in carrying out instructions, lying to a supervisor and abuse of government property.

I have carefully reviewed your grievance and the United States Army Civilian Appellate Review Agency's (USACARA) Report of Findings and Recommendations. USACARA recommended that the penalty assessed was proper for the sustained charges and that there is no basis to grant the personal relief you requested.

I have considered all the issues in the USACARA report and accept the report's recommendations without modification. I have decided, therefore, to deny your requested relief. A copy of the USACARA Report of Findings and Recommendations is enclosed.

My decision is final. You may not request a further review of your grievance with the Department of the Army.

Sincerely,

Carl L. Lockett
Colonel, Military Police
Commanding

Enclosure

REPORT OF FINDINGS AND RECOMMENDATION

in the

GRIEVANCE OF JULIA P. MC INTYRE,

PRESIDIO OF SAN FRANCISCO, CALIFORNIA

I. INTRODUCTION

On 30 May 1989, Ms. Julia P. McIntyre, Budget Analyst, GS-560-07, Resource Management Division, US Army Criminal Investigation Command (USACIC), Presidio of San Francisco, California, filed a formal grievance concerning a three-day suspension for "delay in carrying out instructions, lying to a supervisor, and abuse of government property" (Exhibits 13 and 16). As personal relief, the Grievant requests an apology and restoration of pay (Exhibit 8). The Grievant designated herself as her own representative (Exhibit 12); but she also submitted statements from her "technical

advisor," Mr. Allen L. Perdue, President, AFGE, Local 1457 (Exhibit 10). An on-site investigation was not required; interviews were conducted by telephone.

II. DISCUSSION AND ANALYSIS

A. According to the letter proposing the Grievant's three-day suspension, two incidents precipitated the discipline (Exhibit 16):

1. The proposing official, Mr. Stephen J. Zaleski, Chief, Resource Management Division, had given the Grievant an assignment at approximately 1330 on 8 March 1989. The Grievant was to verify that the dates on five civilian award packages had been entered into the computer's Awards File. She was then to prepare envelopes for the awards and return them with a printout of the file to Mr. Zaleski that day. When the Grievant was about to leave at 1545, Mr.

Zaleski asked her the status of the assignment, to which the Grievant replied that the data had been entered but that she did not have time to print out the file. Immediately upon her departure, Mr. Zaleski called up the file to print it out himself and ". . . discovered that the file had been erased in its entirety." Mr. Zaleski knew the Grievant was aware of the file's erasure because the file showed her attempts to reenter some of the data. The proposal concludes, "You could not have entered the data into the Awards File, as you stated, because the file no longer existed in any recognizable form," and "while I am somewhat concerned that you erroneously erased a complete data file, I am far more concerned that you willfully concealed this information from me and then lied to me about your actions."

2. The proposal also charges that about two weeks before this incident, on Saturday, 25 February 1989, the Grievant entered the closed headquarters building, xeroxed personal items without authorization, and caused ". . . machine failure and a complete shutdown" when excess toner burned onto the drum. The Grievant turned the machine off and left without making any attempt to notify anyone of the machine failure, according to the proposal. Mr. Zaleski and CPT (now MAJ) Mark Harvey, Regional Judge Advocate, were to use the machine on Sunday, but the machine required over one hour of repairs to be marginally operational. Ultimately, two service visits were required.

3. The proposal notes "as further testament to [the Grievant's] disregard for authority" that the Grievant was AWOL for one hour on 10 April 1989 and that in November

1988 she received a Letter of Warning for failure to follow instructions (Exhibit 16).

B. The Grievant replied orally to LTC Robert C. Johnson, Deputy Commander, USACIC, on 28 April. He prepared a summary of her response which she certified as accurate on 10 May, after including an addendum (Exhibit 15). On 22 May, LTC Johnson found that the reasons for proposing discipline were fully supported and did not mitigate the three-day suspension proposed. The decision notes that the Grievant had not accomplished her 8 March assignment ". . . in the required time" and that the Grievant concealed the fact that the file had been lost and lied about the status of the assignment. It claims the Grievant's improper use of the copy machine was "bad enough" but [the Grievant] also denied the machine malfunctioned ". . . despite proof to the contrary." The decision cites the Letter

of Warning (using an incorrect date) and an earlier Letter of Reprimand issued by another supervisor for tardiness, AWOL, and insubordination as unsuccessful efforts to correct the Grievant's behavior. It makes no mention of the 10 April AWOL charge, which occurred after the two incidents cited in the proposal letter (Exhibit 14).

C. The Grievant presents the following arguments:

1. She says she was not at fault for the Awards File incident, citing computer problems and lack of training as factors. According to her, the data "just disappeared" -- she did not "lose it." She says she was afraid to tell Mr. Zaleski because he had been harassing her. Still, she maintains that she did not lie to him when she said the assignment was completed because she had

planned to replace the data with the backup disc the next day.

2. With respect to the xerox machine incident, the Grievant claims she had been coming to work on Saturdays because Mr. Zaleski had accused her of "not pulling my load." She asserts that he knew she was coming in on weekends because he had given her a key, but she does not know if he knew she was coming in on 25 February. She insists she did not break the xerox machine. According to her, the machine had just been serviced three days before and broke down on its own: a sensor malfunctioned and she did not know that paper was going through. She says she had been xeroxing personal items, a drawing, when the machine just stopped, as if the power had been turned off. She did not know Mr. Zaleski and MAJ Harvey planned to use the machine over the weekend. When Mr. Zaleski approached her about it the following

Monday, he was "vicious," so she told him that she did not think anything was wrong with the machine. She questions management's disciplining her without a Report of Survey.

3. The Grievant also challenged the AWOL of 10 April 1989 cited in the proposal letter, noting that she had been playing volleyball as part of an authorized physical training program. She notes that she had been participating in the program for about six months and that LTC Johnson also participated and knew her whereabouts on the day in question. She claims that the Letter of Warning cited in the proposal was unwarranted; and that Mr. Zaleski faulted her for not turning off her computer when someone else was charged with checking it (Exhibit 1, Tab A; Exhibit 3, Tab A; Exhibits 4, 9, 10, 13, 15, and 20).

D. Mr. Zaleski provided the following input:

1. He rebuts the Grievant's claim that she lacked computer training by noting that her SF-171 claimed substantial computer experience. Additionally, he provided her with two correspondence courses in computers. He asserts that while the Grievant frequently complained about her computer, it had been checked by specialists and found to be functioning. He observed that it had been used without any problems to compile the command operating budget during the Grievant's three-day suspension. While he admits that "anything is possible," he feels it is more likely that the Grievant was careless and hit the wrong key, causing the data to become lost. He says he had instructed the Grievant to come to him immediately when she had a problem. In this case, the Grievant failed to do this and

claimed she completed the project when she had not. He views the fact that the Grievant concealed information and lied to him as the "real problem."

2. Mr. Zaleski says that the Grievant was given a key to the building to accommodate her flextime schedule during the week -- she was not authorized to come into the building on weekends. When he confronted the Grievant about the jammed machine on Monday, she admitted to xeroxing her personal items but insisted the machine had been "working fine." He cites her unauthorized presence in the building, the unauthorized use of the machine to copy personal items, her not notifying anyone of the problem, and her subsequent lying about the incident as his concerns. He does not feel the Grievant intentionally broke the machine; thus, a Report of Survey was unnecessary.

3. With respect to the 10 April AWOL charge noted in the proposal, Mr. Zaleski states that "CPO threw it in." Nonetheless, he notes that the physical training program was for a trial period. When the Grievant indicated an interest in continuing to play volleyball after the program ended, he authorized her to use comp-time or annual leave. On the day in question, she used neither and no one knew where she was (Exhibit 1 and Tab B; Exhibits 17 and 19).

E. MAJ Harvey confirms that when he and Mr. Zaleski attempted to use the xerox machine, it was jammed. He says the machine has a tendency to break down every few weeks -- it jams after five or six sheets of paper go through. It is an "unwritten rule" that the last user shut off the machine, let it cool down, and then clear the paper jam as a

courtesy to the next user. Normally, it only takes a minute or two to unjam the machine. He recalls in this instance, however, that the machine was so badly jammed that Mr. Zaleski had to go to the PX, buy tools, and dismantle parts of the machine to release the papers. The papers Mr. Zaleski retrieved from the machine were sketches Mr. Zaleski identified as the Grievant's. MAJ Harvey recalls Mr. Zaleski later expressing his disappointment that the Grievant lied about the machine malfunction. MAJ Harvey perceived that Mr. Zaleski was more concerned about the lie than the malfunction (Exhibit 1).

F. LTC Johnson is now retired and did not respond to messages left by the undersigned; however, there is sufficient information without his input to determine the merits of this grievance:

1. The Grievant produced some evidence that she has experience problems with her computer. Most of what she submitted are memoranda she wrote of incidents occurring after 8 March, but there is also a statement signed by MAJ Harvey that he witnessed her unsuccessful attempts to call up a file (Exhibit 13, attachments; Exhibit 20). Even if she had not produce this evidence, management would have to be able to show that her untimely accomplishment of the Awards File incident was due to idleness, negligence, or other misconduct in order for the incident to warrant disciplinary action. (Normally, performance problems are addressed by other means.) Since this evidence is lacking, the charge "delay in carrying out instructions" is not sustained as an incident warranting discipline.

2. The Grievant has not offered a credible explanation for not telling Mr. Zaleski the truth about the last Awards File, and she does not deny telling him that the assignment had been completed when it had not been. As a supervisor, Mr. Zaleski has the right to expect honesty from his subordinates, particularly as it relates to the status of the work he assigns to them. Accordingly, the charge "lying to a supervisor" is sustained.

3. There did not have to be evidence that the Grievant intentionally broke the xerox machine to sustain the charge "abuse of government property" because the term "abuse" encompasses "misuse." In this case, the Grievant admits to using the machine for other than official government business (which also renders her claims that she had a legitimate reason to be at her worksite on the day in question suspect).

While some organizations may tend to be lax on machine use for personal items, the Grievant's not reporting the machine malfunction resulted in inconvenience and delay for individuals who required the machine for official business. Under these circumstances, the incident could hardly have been ignored. The incident also counts as another offense of "lying to a supervisor" -- the Grievant admits to telling Mr. Zaleski that she did not experience difficulties with the xerox machine while also admitting that it stopped functioning while she was using it.

G. While the Grievant challenged the 10 April 1989 AWOL charge, the decision letter disregards it. This omission was appropriate, inasmuch as the AWOL occurred after the xerox and computer incidents, for which the discipline was proposed, and could

not count as a past disciplinary problem. Two previous disciplinary letters are mentioned in the decision: one informal Letter of Warning (failure to follow instructions) and one formal Letter of Reprimand (habitual tardiness, AWOL, and insubordination) (Exhibit 1, Tab A; Exhibits 14 and 18). AR 690-700, Chapter 751.1-4.c., provides that informal measures will not be counted in assessing penalties. However, these regulations do allow for the consideration of past formal discipline in assessing penalties, i.e., "lying to a supervisor" and "abuse of government property" could be considered second offenses because the Letter of Reprimand had recently been issued. In fact, the Letter of Reprimand was issued for a period of 18 months and was still in force at the time in question (even though issued by another supervisor).

H. Table 1-1, AR 690-700, Chapter 751, suggests the range of penalties for various offenses. Anything from a five-day suspension to a removal is recommended for "Deliberate misrepresentation, exaggeration, concealment, withholding material fact, . . . lying to a supervisor." The three-day suspension decided upon is less than the minimum penalty suggested for a second offense of this charge. "Using government property . . . for other than official purposes" calls for anything from a one-day suspension to a removal for a second offense. The Grievant's three-day suspension falls within this range. Given that the Grievant did lie to Mr. Zaleski about work-related matters in two instances and used the xerox machine for other than government business -- all during a time when previous formal discipline was still in force -- the three-

day suspension was more than fair, other weaknesses in management's position notwithstanding.

III. CONCLUSIONS

A. One charge, "delay in carrying out instructions," wa not shown to warrant discipline and is not sustained.

B. The charges of "lying to a supervisor" and 'abuse of government property" were sustained by a preponderance of evidence.

C. The three-day suspension was more than fair in view of the Grievant's recent formal discipline for other infractions and in view of regulatory guidance providing for even harsher penalties for one of the sustained charges.

IV. RECOMMENDATION

The Grievant should be advised that the penalty assessed was proper for the sustained charges and that there is no basis to grant the personal relief she requests.

20 Exhibits
As Stated in Index

SALI L. MULLEN
Investigator

APPROVED BY:

_____

JAMES C. HOLLAND
Director, Western Region

CERTIFICATE OF SERVICE

Today I sent 40 copies required to Clerk, McDivitt, Office of Supreme Court. Other petitions sent to:

CID Rep Gail Peterson
Staff Judge Advocate
for CID
Presidio of San Francisco
SF, CA 94129

Solicitor General
Department of Justice
Washington, D.C. 20530

Julia Keller McIntyre

Julia Keller McIntyre

on May 31, 1991

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

90-3391

Julia Keller McIntyre
Petitioner,

v.

Department of the Army
Respondent.

JUDGEMENT

ON APPEAL from the MERIT SYSTEMS PROTECTION BOARD
in CASE NO SF07528910808
This CAUSE having been considered, it is ORDERED and ADJUDGED:
Per Curiam (MARKEY, MAYER, and MICHEL, Circuit Judges)
AFFIRMED.
See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED JAN 15 1991

Francis X. Gindhart,
Clerk

United States Court of Appeals
for the Federal Circuit

NOTICE OF ENTRY OF
JUDGMENT WITHOUT OPINION

JUDGEMENT ENTERED: JAN 15 1991

The judgment of the court in your case was entered today pursuant to Rule 36. No opinion accompanied the judgment. The mandate will be issued in due course.

FRANCIS X. GINDHART
Clerk

MCINTYRE V ARMY, 90-3391
MSPB: SF07528910808

CERTIFICATE OF SERVICE

Today I sent 40 copies required to Clerk McDivitt, office of Supreme Court. Three copies were mailed to opposing counsel.

CID Rep Gail Peterson
Staff Judge Advocate
for CID
Presidio of San Francisco
SF, CA 94129

Solicitor General
Department of Justice
Washington, D.C. 20530

Julia Keller McIntyre

Julia Keller McIntyre

on June ~~17~~ 18, 1991

STATE OF CALIFORNIA
CITY AND COUNTY OF
SAN FRANCISCO

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 18th DAY OF JUNE 1991

NOTARY PUBLIC - CALIFORNIA

NOTARY PUBLIC
In and for the City and County of San Francisco, State of California

OFFICIAL SEAL
LELAND H. PERRY
NOTARY PUBLIC — CALIFORNIA
San Francisco County
My Commission Expires Mar. 13, 1993